

DEATH BY LAW

BY
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GOVERNOR OF OHIO



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IT has been estimated that in the last thirty years, the American people have had put to death four thousand criminals.

With that figure in mind, it is fitting that we ask ourselves the question:

Has capital punishment proved successful in the light of practical experience, and is it in keeping with advanced thought and our innermost conception of right and wrong?

To begin with, the death penalty has been administered since the memory of man knoweth not to the contrary. It may be therefore concluded that it has had a fair trial—that its merits or demerits should be known today, if ever. And if we are ready to concede that the long continued adherence to a practice does not in itself indicate its unquestioned merit, an honest, fair-minded and dispassionate consideration of the problem may be had.

There was a time when the violation of most any law of God or man was punishable with death. In the reign of Henry VIII, history tells us, 72,000 petty thieves were executed. In the course of centuries, society gradually reserved this supreme penalty for the most abhorrent and atrocious offenses in the catalog of crimes, until today, in practically every state where it continues, it is largely confined to cases of first degree murder, treason, and in some cases, rape and train robbery.

In many countries, and in some American states, the death penalty has been entirely abolished.

No one with the welfare of society genuinely at heart can be in sympathy with any attitude of pampering the criminal, as an individual or as a class. Self-preservation being the first law of nature, society not only should, but must at all times protect itself from those who violate the fundamental tenets which safeguard its existence. Criminals are enemies of the human race. They must be treated as such. Formerly, little distinction was made in the type of punishment as between different crimes. In more modern times, murder in cold blood and premeditated, has been, in the main, held as the most vicious kind of lawbreaking and therefore rightly visited with the maximum punishment.

But should the maximum punishment be death? Is it accomplishing the purpose for which it is being administered?

When society first assumed the right to punish wrongdoers, its main purpose was to avenge the wrongdoing. Gradually, with the development of enlightened thought, punishment has become more an instrument of protecting society from further wrongful acts by the offender, and by making a drastic example of him, to serve notice on all others criminally inclined, that a similar fate awaits them if they break the established rules of conduct upon which society's very existence is predicated.

Were the criminal to go unpunished, or even to be punished inadequately, it would virtually constitute an invitation to all of evil tendencies to go forth and do likewise. Hence the principle grew up in more modern times, that the more severe the crime, the more impressive and drastic must be the penalty, so it may serve as an object lesson and means of prevention. In that way, the theory of "making the punishment fit the crime" came into being. Then, of late, criminologists have been inclined by results of scientific study of the crime problem, to deal with the individual rather than with a certain type of crime objectively, and to lean toward "making the punishment fit the criminal," rather than the crime itself.

I do not believe that satisfaction of the elementary spirit of revenge which was the chief actuating purpose of criminal punishment in primeval and medieval times, is in consonance with modern public thought or wish.

Though all punishment had its origin in the theory of retribution, the public today is concerned only in so punishing the criminal that it will prevent him, and deter others, from committing similar infractions against personal and property rights of others.

Therefore, speaking of capital crimes, if the death penalty accomplishes these two purposes better than any other means—leaving out of consideration here the sacredness of human life and man's instinctive abhorrence against taking it—then its continued application is fully warranted from the practical standpoint.

Needless to say, the death penalty does effectually protect the public against any further misdeeds by the convicted criminal himself, for dead men telling no tales, they likewise commit no crimes.

But it cannot be said that the culprit's execution safeguards society against him any better than if he were permanently kept harmless behind prison walls.

Therefore, the chief test must be whether by his execution, by the very frightfulness of this act, a greater deterrent influence is exerted upon other potential murderers than, say, by life imprisonment.

In other words, does the specter of the gallows, the thought of the firing squad, the horror of the electric chair or of the lethal gas chamber—all methods of execution now in use in the United States, tend to keep down the number of murders? If so, the case against capital punishment would resolve itself into one of objections only on moral and humanitarian grounds. If not, then capital punishment has lost the most basic ground for its continued existence.

Passing over the argument that the death penalty in the old days, when it was applied to the most minor infractions of the law, failed to curb even them, and coming at once to modern American experience, let me point out that the world war has given the fight against capital punishment the worst blow since the first American state—Michigan—did away with the death penalty just seventy-five years ago. For the crime wave which swept practically the whole world simultaneous with, and in the wake of the war, was accompanied by the return of five states that had previously abolished the death penalty, into the rank of capital punishment.

In three of these states, punishment by death had previously been abandoned for two years and in the two others, for six years. It can hardly therefore, be

said that in any of them, there had been a sufficiently long trial definitely to show failure of the plan. In fact, evidence indicates that when the universally noted increase in crime began to make itself evident in these states, by a corresponding rise in the number of murders, it was immediately attributed to the absence of capital punishment though, in fact, other states where the death penalty was in operation, were going through identically the same experience.

Thus, in Missouri, where there had been an average of 91 homicides for each million population from 1911 to 1915, it rose to 103 in the next four years, following which capital punishment which had been abolished two years previously, was restored.

That this comparatively small ratio of increase in homicides—small as compared with say, my own state where it rose from 55 to 78—was charged to the absence of the death penalty instead of the crime wave, is indicated to me in a letter by Governor Arthur M. Hyde, in which he says, referring to the repeal of the death penalty act in 1917:

“We have no records to indicate whether or not crime increased as a result of this act being abolished but public opinion indicated that such was the case as the Legislature on July 8th, 1919, re-enacted the law whereby capital punishment is again in effect in this state.”

In Tennessee, where capital punishment was abandoned in 1915, only to be re-established in 1917, Governor A. A. Taylor tells me it was “noted by close observers that capital offenses increased during this period, especially the crime against women.” However, he has informed me that the act repealing the death penalty specifically retained capital punishment for the “crime against women,” but that nevertheless, this crime did increase during the period. And, he adds, that there has been a greater number of executions in 1921 than in the history of Tennessee, this being attributed to the crime wave over the entire country.

In Oregon, where there was no death penalty from 1914 to 1920, the ratio of homicides was only 45 per million inhabitants from 1915 to 1919—one of the lowest records in the country and the smallest ratio of any western state. From 1910 to 1914, 59 murderers were received at the Oregon state penitentiary, while in the

following five years, when there was no death penalty, the total number so received was reduced to 36. This would hardly indicate that capital punishment in Oregon has acted as a restraint against murder.

In the state of Washington Governor Louis F. Hart has advised me that capital punishment, discontinued in 1913, was restored in 1919, "as the result of a series of murders." However, available statistics would indicate that the number of murders in proportion to population dropped slightly while the death penalty was not in effect.

In Arizona, the fifth of the states that re-enacted capital punishment after a two-year's trial, between 1916 and 1918, Governor Thomas E. Campbell has advised me that 41 murderers were convicted in that state in the two years prior to the rescission of the death penalty, 46 were convicted during the period of abolition, and 45 were convicted during the two years following the restoration of capital punishment.

"The restoration of capital punishment has not resulted in as great a decrease in the number of murders as the proponents of capital punishment had perhaps anticipated, but there has been of course the additional complication of a nation-wide, if not world-wide wave of crime," Governor Campbell comments on these figures.

Not only did the oncoming of the war thus induce five states to re-establish the death penalty, but two states that were on the verge of abolishing it, were thereby swerved from their purpose. The Illinois Legislature in 1917, adopted a measure against capital punishment, but Governor Frank O. Lowden vetoed it, in part because of a defect in drafting, but in the main because he considered it untimely in a war period. In Pennsylvania, a similar measure had been introduced and appeared sure of passage when America's declaration of war caused legislators friendly to the bill to announce their withdrawal of support.

However, there are today eight states that have no death penalty—Maine, Rhode Island, Wisconsin, Minnesota, Michigan, Kansas, North Dakota and South Dakota. They have had no capital punishment in from nine to seventy-five years. Homicides in the first five have averaged from 1915 to 1919, 35 for each million population, according to New York World statistics compiled by F. L. Hoffman, of Newark, N. J., while in

25 capital punishment states for which such figures are available, the homicide average during the same period is shown to have been 84 for each million inhabitants.

However, such a general comparison is of doubtful value because of the difference of conditions relating to crime between various sections of the United States. Thus the South, with its race problem has by far the highest record of homicides. A somewhat lower record is shown by western states; the middle west running still lower, and the New England states averaging the smallest number of murders in proportion to population. Therefore, as the problem of each of these four groups of states appears to be a distinctive one, because of social and economic conditions, any comparison to determine the deterrent value of capital punishment must necessarily be between neighboring states of the same group.

In the eastern group of states, Maine without the death penalty, has the lowest homicide rate in the country—1.5 for each 100,000 inhabitants, from 1915 to 1919, with New Hampshire's ratio just a fraction higher, with capital punishment. Rhode Island, abolition state, averaged 3.3 murders, as against its neighbors, Vermont, Massachusetts and Connecticut, where homicide ranged from 2 to 3.9 per hundred thousand population.

In the middle west, Michigan, Wisconsin and Minnesota without capital punishment are shown by the same statistics to have a homicide rate of 4, 2.2, and 3.2 per hundred thousand, while the corresponding average in Ohio, Indiana and Illinois, with capital punishment, is 7.8, 5.1 and 7.5, respectively.

No southern state is without capital punishment, but in the west the record of Kansas of 6.8 homicides per hundred thousand population, with no capital punishment, is comparable with Colorado with an average of 9.2 and Utah of 5.6, where the death penalty prevails.

It is thus easily to be seen that on the whole, it appears to make little difference in the prevalence or scarcity of homicides whether the punishment is death or life imprisonment. In fact, there would seem to be a slight lessening of homicides where no death penalty exists. But, at any rate, these figures tend definitely to show that the deterrent effect of capital punishment is largely mythical and merely an imaginary factor.

There is but one method of having any sort of punishment act as a deterrent or restraint against crime, and that is by making that punishment as inexorably certain as it is within man's power to do it. It is not in the nature of things for capital punishment ever to be made so certain. Juries always have been prone to evade a verdict involving a death sentence. The cold-blooded murderer knows that. He figures on it.

In fact, experience indicates even that it is much easier for the calloused murderer, the man who makes crime his profession and sheds blood in its pursuance, to escape the death chair or the noose, than the less hardened type of criminal.

I have before me the cases of four prisoners in the Ohio state penitentiary now serving life sentences, whose cases have been picked out at random as an illustration that the worst type of criminals whom the death sentence is supposed to deter from committing murder, usually manage to get off with a prison sentence.

Designating them by numerals, No. 1, a farm hand, killed his brother in a field by shooting him in the back, buried his body, took his money and then calmly went about his business. He explained his victim's disappearance with the statement he had left for another state. Some time later, he killed his mother in the same manner, stole her money and with it on the same day, hired a rig to take his sweetheart riding. For some time, his declaration that his mother had gone away to join his brother in West Virginia was accepted, but finally suspicions were aroused and the crimes discovered. He was permitted to plead guilty to second degree murder.

Number 2 is serving life for killing a policeman under the most unprovocative circumstances, in cold blood. He is undoubtedly one of the worst criminals in the history of Ohio. His previous career of lawlessness extending over a period of twenty years, included almost every serious crime on the statute books, including a \$25,000 bank robbery in which one official was killed, a \$23,000 pay roll robbery in which two policemen were wounded, and a \$60,000 bank robbery which resulted in his last arrest. He had previously been arrested a score of times. Outside of a reformatory sentence and some fines, he was never punished 'til 1916, when he was given a penitentiary sentence. Upon

his release, he committed two murders and four robberies in which over \$100,000 was stolen. Yet, when he was tried for murder, though he was found guilty in the first degree, the jury recommended mercy and thus saved him from the electric chair.

Case No. 3 is that of a partner in crime of No. 2, with a record as vicious as that of the latter. Though arrested scores of times, outside of a 30-day workhouse sentence, he had never been punished in fourteen years' defiance of law. He was allowed to plead guilty to murder in the second degree for his part in the murder of the policeman referred to in the case of No. 2.

The fourth case is that of another hardened criminal with a bad record, who killed another policeman. He deliberately fired his revolver point blank at the officer, striking him four times. Yet, he was convicted only of second degree murder.

I cite these instances because they are those of deliberate lawbreakers, confirmed and irredeemable, and because if there are any cases in which the making of an example is needed to warn other criminals of the fate awaiting them if they take life, there can be none more glaring. If application of the death penalty is sound, here are types of crimes and types of desperate characters where it should logically be imposed. The object lesson to those of their stamp is required if anywhere.

However, by their ability to hire able attorneys, such men manage with almost uncanny regularity to cheat death, while some murderers with a previously spotless record and who are without money or other resources available to the professional criminal, are consigned to the electric chair.

A man was sentenced to death in Ohio, who slew his wife in a sudden mad frenzy, mutilating her terribly. He used as an instrument a small pen-knife with a blade about two inches long. Premeditation, which must be present for first degree murder conviction, appeared completely lacking. Notwithstanding this, the man was sentenced to death. He had no previous crime record.

A few years ago, a youth from a small town was executed, who at 14, had to become his family's support. He studied music, and up to the time of his crime, had established a record as one of the substantial young men of his community. He had no bad habits. However, he and a very young girl fell in love and when her

foster parents, because of her youth, forbade her marriage and her acceptance of his attentions, he killed her, failing to commit suicide as he had intended.

Some months ago, another execution took place for a murder under practically identical circumstances.

In pointing out these cases, I do so not in any attempt to show that the death penalty, if it is justifiable at all, was not warranted in these instances, but simply to point out that somehow murderers who belong to the habitual criminal class, frequently get off with a term in prison and that this more than offsets any deterrent influence which the prospect of punishment by death may possibly have upon those contemplating the taking of life in the commission of, or to conceal another crime.

Strangely, this type of offender appears in practical experience to receive a good deal more consideration in our administration of criminal justice, than the first offender. That is because the professional criminal when he is caught, is prepared for this eventuality. He has financial, legal and other resources available to him, far beyond those of the person who has been law-abiding, and then for some reason commits a serious crime. People with such resources in the light of actual experience, discount the chances of their being apprehended, and if caught, of being convicted, if at all, on any but an imprisonment basis.

And unfortunately, in Ohio—and there is little reason to believe conditions to be different in many other states—life imprisonment has meant an average of eight years.

Since 1900, there have been 1652 murder convictions in this state. During the same period, there were sixty-four executions. In other words, out of every 100 murders, less than four were made to suffer the extreme penalty. It must be remembered that not all are caught, and far from all tried are convicted. And even in first degree murder convictions alone, in which capital punishment is optional with the jury—it was applied only in one out of every five cases.

And, as pointed out, murderers of the most desperate character for some reason not infrequently are let off with second degree sentences.

Under such circumstances, it is not a far-fetched conclusion that the man who plans a murder in cold

blood, if he considers at all the possibility of capital punishment, looks upon it as too remote to let it influence him.

Of course, it must also be remembered that the death penalty is applicable only in murder cases where the crime is deliberate, where premeditation can be proved.

There is only one way of making the horror of death an active and real deterrent against the commission of murder, and that is by having the death penalty unfailingly and inexorably imposed in every murder case. Such a course is clearly impossible. And where it is restricted to first degree murder, juries invariably show a strong leaning, because of the natural aversion to taking another man's life that exists in every normal human being, to convict on a lesser charge. This is also emphasized by the fact that in states that have abolished the death penalty, first degree murder convictions immediately become easier to obtain.

It is only certainty and unfailing application of punishment that will act as a real restraint against crime. However, the prospect of just a few years imprisonment under the deceptive guise of a life sentence, will not do it, where society is dealing with characters to whom human life means nothing. A life sentence, if it is to cope with the situation, must be made to mean a good deal more than a short prison term.

It is frequently urged by prison authorities that the imposition of a life sentence in its literal sense, would deprive the prisoner of the one thing that buoys him up, and that must be the basis of all effort at reformation—HOPE. For that reason, they declare, a life sentence meaning that to the prisoner, would make him uncontrollable, drive him to insanity, convert him into a beast in human form.

I do not wholly agree with that view and consider that in the main a problem of prison management that can and will be solved.

I have good reason to believe that there are instances where genuine reformation is possible even in the cases of some men who have taken life. But such cases do not warrant the release of such men from penitentiary after only a few years. Society's duty to itself, first, in order to make punishment sufficiently severe to make it exemplary, and secondly, to make the length of the imprisonment a guarantee of the genuineness of such

reformation, if it is evident, demands that the life sentence under the most favorable circumstances be not reducible to less than say, twenty years, unless of course, innocence be shown. Where conditions are not so favorable, a life sentence should mean a life sentence, nothing less, and no Governor or other authority should have power to either pardon or parole in such cases, except possibly where the prisoner is dying.

Because of the practical obstacles in the way of a universal application of the death penalty in all murder cases or even to all genuinely first degree cases, the certain taking away of the criminal's freedom for life, with an unavoidable minimum of twenty years, would serve as a much more effective warning to a potential murderer susceptible to any kind of warning, than does the merely spasmodic and unequal application of the death penalty as now in operation.

This much for the practical purpose and effect of the death sentence and its complete failure to check capital crimes.

But what about the moral right of society to take life? That aspect of capital punishment has been often discussed and has usually been made the basis of pleas for its abolition. It has also been as often condemned as false, foolish and morbid sentimentality. However, if capital punishment fails as a deterrent of murder, if it does not accomplish its purpose in a practical way, then its continuation must be justified upon some sound moral ground.

The most commonly urged justification is the Mosaic principle of law of "an eye for an eye, and a tooth for a tooth." Those who advocate this theory contend that the Old Testament commandment in the Decalog, "Thou shalt not kill," is not in conflict with it and that the latter principle was never intended to apply to an organized state.

If we are to be consistent in our adherence to the Mosaic law, then we should not accept one part and discard the other. Are we ready today to punish with death all the capital offenses under this ancient Jewish code—some of them not even misdemeanors under our modern conceptions? Are we even ready to enforce it fully in the case of every murderer? Or are we to take the solemnly voiced injunction, "Thou shalt not kill," embodied separately in a code of ten elementary

principles of human conduct that has come down to us through the ages for the guidance of the human race?

However, assuming that the "eye for an eye" principle in taking life can logically be adopted for the sort of offences we choose, ignoring it as to others, its application and justification must rest entirely on the basis of revenge—a basis of action that would be difficult to reconcile with the enlightened spirit of modern civilization, and yes, with the basic principle of the world's preponderant religious influence which is the very antithesis of the spirit of revenge.

One of the strongest points against capital punishment is the natural revulsion of feeling of man individually when a life is taken—even when the state acts as executioner. The human conscience rebels at the thought of life being taken under such circumstances, as well as under any other.

It is not a pleasant thought to our conscience to picture a human being, in the flush of health—a criminal to be sure, but still a human being, created in the image of God—being carefully, almost tenderly prepared, for the hour of his doom. We treat him with anything but the fierceness of righteous anger which an outraged society does feel in the contemplation of his crime. Inconsistent as it may seem, all possible is done to make his last hours as easy as such hours may be. We tempt him with his favorite food. We allow him privileges which are denied to other prisoners. We treat him with consideration and thoughtfulness. Society even makes his spiritual welfare its interest, brings him religious solace and comfort and endeavors to lead him on the path of repentance to a realization of the enormity of his violation of divine law.

And there, virtually in the very presence of his Maker, he continues, perhaps, up to his last gasp, to avow his innocence—as sometimes even though rarely, is the case, and as has been the case during my own experience as Governor. And when we remember man's fallibility, the many instances where human mind errs, the chance, though maybe remote, of a miscarriage of justice, who is there who can tell with definite certainty whether that prisoner, standing on the very threshold of eternity, is not speaking the truth?

Only very recently, there was demonstrated in Ohio the complete innocence of a man convicted of rape and sentenced to life imprisonment. The evidence in the

case wasn't even circumstantial. His conviction was on the testimony of his 15-year-old daughter. He has served six years in the penitentiary. Last March, the girl, since married, voluntarily confessed to having perjured herself. She made affidavit that she had been forced by her mother, under threat of being sent to an institution, to accuse her father of responsibility for her condition. A sister swore also that her mother, since dead, had attempted with threats of physical violence, to compel her to give similar testimony against her father. The mother, both said, had insisted the family would be better off if they succeeded in getting rid of the father. Several other children told of facts all tending to exonerate him. The trial judge said he was in doubt of the man's guilt at time of trial and had attempted himself to break down the girl's testimony, but the jury was not brought to entertain such a doubt of her statements. He wrote to me: "It is to be regretted that an innocent man has been made the victim of a vile conspiracy, and made to suffer the loss of liberty for so many years, and that he is without any redress at all."

The prosecuting attorney who obtained the conviction strongly interceded for the prisoner.

Needless to say, I pardoned this man as soon as the full facts were brought to my attention.

I cite this case, for one thing, because it is directly in point with a discussion of capital punishment as in a good many states the crime of which this man was convicted is punishable with death; and secondly, because it shows how unreliable even direct human testimony is at times. Is it safe to risk a human life on such testimony? The harm of depriving an innocent man of his liberty is in itself a tremendous wrong, but at least there remains the chance of his exoneration before the world. But once the law takes his life, the harm is eternal and beyond repair.

One or two states, recognizing the danger of a mistake connected with convictions on circumstantial evidence, have definitely barred the death penalty in capital cases where the evidence is of a purely circumstantial nature.

Yet the foregoing case shows that even such a safeguard does not go far enough, because of the possibility that the most convincing kind of direct evidence may be trumped up by the witness.

In an address before the Governor's Conference in Boston in 1916, Governor Edward F. Dunne of Illinois, said:

"In 1901, there was convicted of murder in the city of Chicago, one ^{S. V. N. G.} Synon; he was condemned to die. His case was appealed to the Supreme Court which reversed the lower court because of objectionable remarks by the trial judge while the accused was on the witness stand. Synon's second trial was held in the court over which I had at that time the honor to preside. He was acquitted after many reputable witnesses had testified that he was four miles from the scene of the crime when it was committed. The man was saved by a few harsh and prejudicial words of the judge before whom he was first tried; and thus errors, upon which he was able to appeal, became the means through which it was possible for him to establish his innocence. Only those words which the court had committed in error in uttering, stood between him and the cruel tragedy of which my state would have been guilty."

Several years ago, two youths were sentenced to death in Pennsylvania. One of them secured a new trial and was acquitted.

The case of a man named Stielow has been quoted in New York, who is declared to have been three times close to the electric chair, once within less than an hour, only to be finally saved by the confession by another to the murder of which he had been convicted.

One case, involving only life imprisonment, however, was taken to the United States Supreme Court on the admissibility as evidence of a confession of an Indian before his death, to the murder of another Indian for which one Donnelly was convicted. Under the rules of law, such evidence was declared inadmissible and Donnelly's guilt upheld—a decision from which Justice Hughes, now Secretary of State, and Justice Holmes and Lurton however dissented.

There are many other cases on record where innocent persons were saved from the death penalty by fortuitous circumstances; likewise where it is certain innocent persons have been executed.

Undoubtedly, the chances of such innocence being shown are infinitely greater when the man who is charged with the crime is still alive and where his freedom is the stimulus of his and his friends' efforts at exoneration, than where death has rendered such efforts futile.

It was Lafayette who said:

"I shall ask for the abolition of the Penalty of Death until I have the infallibility of human judgment demonstrated to me."

When the law has once spoken, no protestations of guiltlessness are sufficient to interfere with its operation. It is true the Governor has the power to pardon and commute, but he cannot consistently set up his judgment against that of twelve men, without substantial evidence of innocence or strongly mitigating circumstances, and that evidence may come too late.

In due course, the convicted man is taken—maybe led, perhaps dragged, possibly carried—into the death chamber or onto the scaffold. At an hour when the public sleeps—as if to save it from the hideous spectacle—amid a deathlike silence broken only by the almost inaudible murmuring of prayers and in a clammy chillness that is not of physical cold, the last fateful, gruesome preparations are made.

The doomed man, unless suffering from nervous collapse, watches the careful arrangements. Fully conscious, and in complete possession of his faculties, he may even by adjusting himself to the rope or electron, try to help in a pitiful way, in getting himself ready. He rarely fights. He realizes the futility of it. He knows society has rendered him helpless and that he must submit to its implacable decree.

Prison wardens are not presumed to be moved by such scenes. Accustomed, however, as they are to them, to dealing with the most desperate criminals, there are cases upon occasion—maybe of youths not yet out of their teens, victims of environment, or of uncontrollable impulses or possibly where there may be some doubt of guilt—when they prefer to be absent, letting their assistants carry out the sinister task which they shrink from witnessing.

It has always impressed me that society subconsciously feels the sacredness of any human life and somehow realizes the chance of human mistake in

putting to death a person convicted of a severe crime. How otherwise can be explained the plain desire to relieve individuals from the thought of responsibility for performing the death-causing act?

In electrocutions, several levers have to be pulled. One man is assigned to each. None knows which carries the fatal current.

In hangings, the same precaution is taken. Several cords must be severed. Only one is connected up.

Even where the firing squad is resorted to, whether in civil or military executions, care is taken to load some of the rifles with blind cartridges and none of those firing the volley are allowed to know which person's rifle discharges the fatal bullet.

If society has no compunction about the act, why should it thus try and protect, by a method of indirection, the feelings of those who carry out its mandate? There is no such subterfuge in war. The justification in killing in war time lies in the principle of self-protection, carried into the relations between nations. If an individual's or nation's life or safety is threatened, either one necessarily has not only the right, but the elemental duty to protect it at any cost.

However, the condemned man has already been rendered helpless. Need the state take his life to continue him harmless to the public? Experience shows that capital punishment has failed as a deterrent to others. Society is fully protected from the criminal's further acts as long as he is kept in prison. Certainly, it cannot be argued that it is impossible to devise a system that will keep him in prison for his entire life, if necessary, but under no circumstances less than the interest of the public demands.

Through the manner in which executions are carried out, the citizenship is made to feel that a relentless power utterly apart from and without relation to it, is exacting a human life. Yet each citizen bears full responsibility for the act, as much as if he himself personally set in motion the mechanical operation which effects the death penalty. Suppose, instead of asking public servants to carry out executions, the task were required to be performed by an individual citizen picked in the same way that jurors are selected—and nothing could be fairer—capital punishment would cease to exist as soon as such a plan was sought to be

enforced. Yet, if capital punishment is essentially and fundamentally right, why should citizens shrink from such a task—when, for example, no citizen will hesitate to take a life in protection of his person, home and family?

And on what theory can the citizenship ask and justify the performance by its servants of any act which the average individual citizen would shun?

The greatest power in all creation is the power over life and death. In dealing with murderers, we are dealing with persons who have attempted to arrogate to themselves this divine power for revenge, for unlawful enrichment or from some other unworthy motive. It can hardly be said that society inculcates a wholesome respect for the sacredness of life by emulating the example of the criminal itself.

In most of the states, the direct power over life and death which the commonwealth takes unto itself, is delegated into the discretion of an individual—the Governor—the official representative of the public, to be sure, but still an individual. I contend that no single human being or even a small group of human beings, should have vested in them such an unqualified and sweeping power, for virtually, it becomes his individual responsibility. And that is an unthinkable condition.

In fact, I am a strong believer that even the chief executive's unchecked authority to grant freedom to prisoners should be radically restricted, especially in the case of life prisoners, so as to obtain only in cases where clear proof of innocence is produced, or in the event of mortal sickness. For unwise and indiscriminate use of the pardon and parole power is one of the really serious elements contributing to crime conditions.

For one thing, if the criminal is made to realize that this one avenue of possible evasion of the consequences of his crime is completely closed to him it is bound to contribute as a deterrent influence—an influence that will be further increased as defects in our processes and plan of criminal justice are corrected so that a dead certainty of his punishment will be impressed upon the person planning a crime.

And besides, it will tend definitely to cope with the repeater—the man who commits one crime—is paroled or pardoned, and thereby is encouraged to new, frequently more severe offenses.

The case of one of the life prisoners in the Ohio state penitentiary at this time—one of the four, to the viciousness of whose records I have previously alluded, is in point. After having been arrested seven times on various offenses and allowed to escape with either a fine, a short workhouse sentence in one instance, or with no punishment at all, he was finally convicted and sent to the Reformatory for life for burglarizing an inhabited dwelling in the night season. Less than three years later, he was paroled. A short time after, he was rearrested following several new crimes, and returned to the institution. Within a year and a half, he was again paroled. Less than two months after, he was again arrested but the case was not pressed. After another crime, he was sent back to the Reformatory for the third time. And again he was paroled. Another crime with a penitentiary term, from which he was released in less than two years, came next. Then followed a long series of the most severe crimes including two murders for one of which he is now serving a life sentence.

However, a life sentence is really a misnomer in Ohio, as it is in most other places. In the first place, the Governor may pardon a life prisoner at any time at his discretion. And then, under the Ohio laws, he automatically becomes eligible to parole after he has served ten years. As pointed out above, the average life sentence means just eight years in prison.

I am firmly convinced that a criminal of the above type is not safe to be again set at liberty at any time. However, there is a possibility that some life prisoners whose record is less reprehensible, may be reformed, and for that reason a time when they may become eligible to parole should be fixed, but in the interest of society and the protective influence as a crime restraint of such a policy, there should be a definite bar against any release of any such prisoner on any ground, except proof of innocence or because he is dying, prior to at least twenty years imprisonment.

I believe further that juries, in determining the degree of guilt, should be compelled to take into serious consideration the previous record of the man they are convicting.

There is essentially no difference in Ohio between life imprisonment, whether for first or second degree murder. Technically, one man is found guilty of having

killed another with premeditation and with malice aforethought, but when the jury recommends mercy, he is punished no worse than the man found guilty of second degree murder. Both may be pardoned at the Governor's discretion.

I have in mind several life prisoners at the penitentiary—trusties who have served varying periods, and whose exemplary conduct allows them a measure of freedom denied to others—model prisoners in every way—who committed unpremeditated murders, usually while crazed by liquor, as the first offense against the law in their lives. Yet, in its substantial effect, their life sentence is not a whit different from that of the confirmed criminal whom the jury's recommendation of mercy barely saved from the electric chair.

That is hardly such comparative justice as will tend to instil a salutary fear of punishment in the person contemplating a crime.

It is in a correction of such conditions as these rather than in capital punishment that the solution of our criminal problem lies. I believe the public is gradually awaking to this fact; that the death penalty is serving no purpose, (except dispensing with the necessity of feeding, housing and providing work for the prisoner) which cannot be accomplished with much better effect in the interest of society, by imprisonment, and the public's will to abolish executions will be expressed in many states before many more years.

This growing attitude is indicated by many signs. Thus some states, like Idaho, while retaining the capital punishment idea, have made it practically a dead letter and have not applied it in years. In Nebraska, Governor Samuel A. McKelvie in his last message to the state legislature, urged the abolition of the death penalty, and also action to prevent the Governor or any one else but the court to alter a sentence.

In New Jersey, though the death penalty continues, the chief defect in the present system has been recognized. There, so Burdette G. Lewis, the noted prison authority who directs that state's institutional work, has advised me, a law has been passed "which makes life imprisonment mean life imprisonment and not a period of years. There is, therefore, no minimum term for life imprisonment. A Court of Pardons consisting of the Judge of the Court of Errors and Appeals, the

Chancellor and the Governor, has full power to parole any convicted prisoner at any time after his conviction."

Mr. Lewis also urges a centering of "the modern attack upon the failure of the courts to convict murderers." "This," he says, "is one of the very serious problems before the country."

On this point, Governor J. A. O. Preus, of Minnesota, where capital punishment was abolished in 1911, says there has neither been any great increase or decrease in homicides since then, but that "it seems to be a little easier to get convictions."

Colorado is one of the states where both capital punishment and elimination of the death penalty have been tried. Governor Oliver L. Shoup, of that state, is in complete accord with the statement of Thomas J. Tynan, warden of the Colorado state penitentiary, who says:

"While we have capital punishment on the statute books and while it is enforced in extreme cases, yet I have never been able to see where it has done any good. On the other hand, many men who have been sent to this institution under death sentence and who have been commuted to life, have made great progress, and in fact some who have been liberated on parole have become very useful citizens."

"Personally, I am against capital punishment from every standpoint."

In Oklahoma, Governor J. B. A. Robertson who has told me he has always been an advocate of capital punishment, has become doubtful "of the value or lack of value of this method of punishment," during his present term as Governor.

Governor Emmet D. Boyle, of Nevada, where there has been only one execution in twelve years, is "disinclined to believe that capital punishment is of any particular value."

Governor Warren T. McCray of Indiana has also expressed himself to me as not very friendly to the capital punishment idea, but inasmuch as the laws are on the statute books, he deems it his duty to carry out the decrees of the courts.

That has been exactly my position in Ohio. Since the beginning of my term of office a year ago last January, twenty-six murderers have been condemned to

death. As long as capital punishment is the law of the state, necessarily it is my duty to enforce it and I have not granted a single commutation of sentence. Sixteen men have therefore been executed and ten are now in the death house awaiting electrocution.

It is hardly necessary to say that governors in connection with these cases are compelled to steel themselves against the most pathetic pleas that can touch the heartstrings of human emotions—of fine old ladies going on their knees to implore for the life of those they bore and nursed and reared through boyhood, and who to them are still boys incapable of wrongdoing; of wives and children—all innocents who must suffer with those whom their son, or husband or father, has deprived of a son, husband or father.

It is scenes of this kind that cannot fail to convince a man that no human being is sufficiently free himself from sin and error, to exercise the supreme power over life and death.

One of the strongest arguments that I believe has ever been made to show the value of life imprisonment has been sent to me by Governor Ben W. Olcott, of Oregon. It is an extract from an article by a life prisoner that appeared in the "Lend a Hand," the Oregon state prison magazine, in January last year. I see the lesson of the article not so much in what the writer says, as in the effect which his imprisonment appears to have had upon him:

"The writer," it reads, "a life prisoner himself, does not uphold cold-blooded, premeditated murder, by any means, but he does know to the last and most minute detail, the sensation and nauseating feeling of taking a human life; the sorrow and regret, the loss of all that is near and dear, and the writhing agony of knowledge that all he can do, or that the law and mankind may do to him, cannot, by any manner of means, restore the life he has taken. And also he knows, through ten long, bitter years of experience and study of the gray brotherhood, that it is very seldom a life prisoner commits even a trivial crime after being pardoned.

"This is not a personal plea; (I happen to be a replica of what Grace Hall, through the Oregonian, demands the lifer to be—doomed to perpetual imprisonment) it is a plea for common sense against barbarity in the use of the gibbet; a plea for the benefit of future

generations who will bow down in shame that their forefathers lacked the saving grace of faith, hope and charity as taught by the meek and lowly Nazarene, who in the last agony of His cruel crucifixion, cried aloud:

“Father, forgive them; they know not what they do!”

Wm. L. Davis

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